Validity of Section 377 of Indian Penal Code 1860: A Critique

THE
SYNOPSIS

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Introduction

Sexuality is a very fluid concept. Homosexual behaviour has existed for a very long time. It had existed from the time when human beings started to walk on earth. In India, the existence of homosexuality can be traced back to ancient times.[1]

It is actually in 1869 that the term homosexuality is used for the first time, by a Hungarian doctor who asked for its legalization. Not only was homosexuality invented, but also heterosexuality. Heterosexuality was simply normal sexuality, or just sexuality.

The word Homosexuality consist of two words i.e HOMO and SEXUALTY. The word HOMO is derived from Ancient Greek word which means "same", and the word SEXUALITY is derived from Latin word "*sexus*", which means "sex". Homosexuality is romantic attraction, sexual attraction or sexual behaviour between members of the same sex or gender.

The most common terms for homosexual people are *lesbian* for females and *gay* for males, though *gay* is also used to refer generally to both homosexual males and females.

Along with bisexuality and heterosexuality, homosexuality is one of the three main categories of sexual orientation within the heterosexual–homosexual continuum.[2]

However, in past centuries, it was considered as an abnormal occasional behaviour, not as an exclusive identity. Homosexual relationships and acts have been admired, as well as condemned, throughout recorded history, depending on the form they took and the culture in which they occurred.

[1] Shreya Basu, Section 377 : The end of a struggle or the beginning, June, 2020
[2] French brother. Homosexuality: Facts vs. Fiction. http://www.euro-tongil.org/ swedish/english/ ehomo2.htm. accessed on 12/10/2019.

It was understood that some people occasionally practice sodomy, although it was condemned by religion and by law, but they had no idea that one could be exclusively homosexual.[3]

For many years after, homosexuality has been treated as any other mental disorder. Many of the techniques caused physical injuries and emotional trauma. There is no consensus among scientists about why a person develops a particular sexual orientation.

Many scientists think that nature and nurture – a combination of genetic, hormonal, and environmental influences–factor into the cause of sexual orientation. They favour biologically-based theories, which point to genetic factors, the early uterine environment, both, or the inclusion of genetic and social factors.

Scientific research has shown that homosexuality is an example of a normal and natural variation in human sexuality and is not in and of itself a source of negative psychological effects.

Most people experience little or no sense of choice about their sexual orientation, and there is insufficient evidence to support the use of psychological interventions to change sexual orientation. While some people believe that homosexual activity is unnatural.[4]

It is only in the final decade of the 20th century that the gay/ lesbian/ bisexual/ transgender movement brought to the fore the rights of those discriminated against because of their sexuality.

In 1991, Amnesty International for the first time came out with a policy to support the rights of people imprisoned because of their sexual orientation or because of engaging in homosexual activity in private.

[3] ibid
[4] ibid

In the mid 1990's, the Human Rights Committee held that the anti sodomy law of Tasmania violated the right to privacy and the right to non discrimination guaranteed to all persons under the International Covenant on Civil and Political Rights.

In Scandinavia, the provision of equal rights for sexuality minorities, including marriage rights, was an important breakthrough. The other major development has been the South African Constitution, which for the first time expressly prohibited discrimination on grounds of sexual orientation.[5]

But while the scope of human rights has been extended to include hitherto marginalized communities at the global level, a similar movement is yet to take place in India. In fact, most human rights organizations in India (such as the People's Union of Civil Liberties – PUCL) have not begun to address the question of rights of gays, lesbians, bisexuals, transgender, hijras and others who are oppressed due to their sexuality.

But this ignores the fact that sexuality is integrally linked to ideologies and structures of social oppression such as patriarchy, capitalism, the caste system and religious fundamentalism. Hence, the struggle for sexuality rights cannot be separated from the broader human rights struggle for economic, political and social liberation.[6]

Homosexuality also finds a mention in the various pre-colonial laws. Homosexuality is seen as an offence in Manusmrithi, which however can be expiated. Lesbianism by contrast merits more serious punishment. Islamic Shariat law treats homosexual conduct as a serious offence; though it is being argued by some recently formed gay Muslim organizations that Islamic law can be interpreted in a no homophobic fashion. It was with the enactment of uniform criminal laws in India, in 1860 that there was a uniform proscription of homosexual behaviour. Though sexuality minorities have always existed in India sometimes in forms, which are culturally sanctioned (such as the hijra) and at other times in invisibility and silence, their issues have never seriously been articulated. It is only recently that the rights of sexuality minorities as an issue

[5] Human rights violations against sexuality minorities in India A PUCL-K fact-finding report about Bangalore. Available at http://sangama.org/files/sexual-minorities, accessed on 12/10/2019.
[6] ibid

have been taken seriously in India by various civil society organizations. With the founding of India's first gay magazine Bombay Dost in the late 1980's and the starting of a lesbian collective in Delhi called Sakhi, lesbian, gay and bisexual issues were first articulated in a public forum. Since those early beginnings, the fledgling sexuality minority rights movement has grown increasingly vocal and articulate.[7]

Many gay and lesbian people are in committed same-sex relationships, though only recently have census forms and political conditions facilitated their visibility and enumeration. Since the end of the 19th century, there has been a global movement towards increased visibility, recognition, and legal rights for homosexual people, including the rights to marriage and civil unions, adoption and parenting, employment, military service, equal access to health care, and the introduction of anti-bullying legislation to protect gay minors.[8]

Today diverse voices and groups based all over India increasingly articulate the rights of these communities to lives of dignity without fear and the threat of violence, and with the same constitutional and human rights as all others. The movement has long been documenting and protesting human rights violations against such communities, and bringing the history and the real stories of struggle, resistance and support within the communities to light. Now, along with other rallied movements it also challenges larger structures that seek to use deliberate constructions of what is "natural" and "normal" to penalise all those that do not fit into a heterosexual, binary- gender framework.[9]

We live in a society that constantly tells us that there is only one kind of acceptable desire that heterosexual, within marriage, and male. Social structures further define and defend rigid notions of what it means to be a man or women, how the two should relate, and the family unit that should result. All those who dare to think outside this perfect ideal are considered threats to "morality" and to society at large. In response to this

[7]ibid
[8] ibid
[9]ibid

threat, the system either tries to altogether deny the existence of those deviating from the normal (as in the inveigling of lesbian women), or dismisses that as imports from the West. When their presence is difficult to ignore, they are punished in ways that deny them a life of dignity and freedom.[10]

Section 377 of Indian Penal Code1860, criminalises "voluntary carnal intercourse against the order of nature," and remains one of the main obstacles for the sexual rights movement today. It is ironic that a British colonial law passed in the early 1860's to criminalise or non- procreative sexual behaviour (whether homosexual or heterosexual), is purported to be reflective of our society even today. Under this law, all "unnatural" acts ranging from consensual same- sexual activity between adults, or even oral sex between married heterosexual couples are offences, though the pervasive homophobia in our society ensures that only the first is ever prosecuted. Section 377 imposes a stifling uniformity upon what we know to be rich and varied diversities of sexualities and genders. It legitimises notions of what is 'natural' and 'normal', with a view to upholding the institutions of heterosexuality and patriarchy such as marriage and the family in order to maintain the existing inequalities inherent in these systems. It allows for punishment to be meted out to gay, lesbian, hijra, transgender and bisexual people whose human rights are repeatedly violated by state and non- state actors as diverse as the police, the family, the media, and the medical establishments.[11]

Numerous studies and fact finding reports document violations ranging from sexual assault and abuse in police custody, extortion, electroshock and drug based reparative therapies in mental health institutions, and wide ranging social stigma and discrimination on a day to day basis. The seriousness and repeated nature of these violations has not yet been understood by society at large. Even in our personal lives, anecdotal evidence suggests that the existence of the law continues to be a major obstacle for friends, families, work colleagues, and others to openly accept diverse sexual orientations. Those who are committed to support these marginalised

[10]ibid
[11]ibid

communities through outrage, education and advocacy work, have faced the danger of being found legally culpable. Further the existence of section 377 and its use to prosecute cases of child sexual abuse has frustrated many child rights activities, who argue that section 377 was never met to be a law on CSA and is therefore woefully inadequate in understanding any of the complexities or needs of CSA cases. As long as this remains on the books, they fear, no comprehensive law on CSA will be formulated.[12]

The first legal petition against section 377 was filede by AIDS Bedhbhav Virodhi Andolan in 1944.currently, a PIL filed by the NazFondation, India, is being heared in the delhi high court. Section 377 adversely impacts the lives of homosexual people, child rights, women's rights, mental health praxis, and human rights. The law affects HIV/AIDS outreach and prevention efforts, how the law limits any effective addressal of child sexual abuse, while also explicitly countering the false belief that gay rights adversely impact child rights. Another article documents violations against homosexual people at the hands of mental health practitioners and shows how section 377 perpetuates homophobia within mental health spaces. The final sections document the intersections of sexuality with both women's rights and human rights discourses, and firmly places sexuality rights within our understanding of basic human rights.[13]

Lesbian, gay, bisexual and transgender (LGBT) people in India face legal and social difficulties not experienced by non-LGBT persons. Sexual activity between two persons of the same sex is criminalised, and is punishable by incarceration. India does, however, legally recognise Hijras as a gender separate from men or women, making the country one of the few in the world to legally recognise a third gender.[14]

Violence and Oppression on Sexual Minorities in India[15]

[12]ibid
[13] ibid
[14]ibid
[15]Naz foundation v. government of NCT of Delhi, WP(c) NO. 7455/2001, available at http://.indiankannon.org/doc/100472805 (acccessed on 15/01/ 2019)

In 2001, a patient who was undergoing treatment in AIIMS (All India Institute of Medical Sciences) for curing his homosexuality was unethically treated by doctor in psychiatry department and became victim of trial of new drugs, then through Naz foundation, he filed a complaint with National Human Rights Commission (NHRC) but Chairman rejected the petition and said until Section 377 is deleted we cannot do anything.

What is important to note is that it is not only gender that is regulated by law, but also sex. A person, once born into one sex is legally forced to live within the same sex. Sex changes are not yet legally recognized in India. In 2003, the Madhya Pradesh High Court upheld the order of an election tribunal which nullified the election of a hijra (eunuch), KamlaJaan, to the post of Mayor for women and that Kamala, being a 'male', was hence not entitled to contest the seat. The decision essentially implies that one cannot choose one's sex and that one should remain within the sex into which one is born.

The 2004 Bangalore Incident resulted in the revelation of sexual torture of LGBT people by law enforcement. One victim was a transgender who, while at a public place dressed as female attire, was tortured by the police.

In January 2006, the Times of India reported on the arrest of four men from Lucknow (the capital of Uttar Pradesh) on charges of running an online gay club and engaging in 'unnatural sex' in public places. There was no evidence that the men arrested had had sex, as police claimed. The arrests were predicated upon the belief that these men were homosexuals and are 'likely to commit sodomy'. The four men arrested were released, on bail after 12 days, but that the case continued. Further, information on the case could not be found among the sources consulted by the Research Directorate.

Recently in February 2010, Professor S. R. Siras head of the department of Modern Indian Languages at AMU (Aligarh Muslim University) was firstly suspended on 9 February, 2010 following an operation where media personnel and university authorities entered his house and filmed him having consensual sex with a male friend. Due to this open violation of the fundamental right to privacy and dignity, he committed

suicide at the end of the month as he found himself unable to face such a humiliation at the hands of society.

Section 377 does not include lesbians, because the law requires penetration; however it has been used by State authorities to harass and intimidate lesbians. In several Indian states, lesbians have committed suicide due to harassment and discrimination which ranges from "queer-bashing" to the loss of jobs and residence. In regard to the ability of lesbians to exist violent situations, Khaitan suggested that it is very difficult for a single woman, whether straight or queer, to even get a house without a man. Thus, the lower status of women, including a lack of social, educational and material resources, restricts them from being able to 'migrate to more accepting environments'.

In India, Lesbian suicide appeared first in 1979, when partners 'Jyotsana and Jayshree', after being forced to marry men, jumped in front of a moving train together. On 29 June, 1980, college students 'Mallika and Lalitambica', both aged 20, tied themselves together and leaped into a canal but were saved against their will.

In 2001, Ragini (15) & Manju (22), two tribal girls in Moolamattam, Kerala, ended their lives in August because of the trauma of not being allowed to live together. Manju was the first cousin of Ragini's father. Their bodies were seen side by side on a rock near on irrigation canal close to Ragini's house on the morning of 25 August, 2001. The two had been living together for some time. They had even asked their relatives to get them married to each other. When the relatives objected, they approached the local police station with the same request, but they were sent back after counselling. Subsequently, both underwent psychiatric treatment. The girls were seen under suspicious circumstances near the canal on the evening of 24"', but ran away when people spotted them.

A Section of society has been thus criminalized and stigmatized to a point where individuals are forced to deny the core of their identity and vital dimensions of their personality.

Sexual rights have been on the periphery of law, movements, and society for far too long, and it is imperative that the pervasive discrimination against large number of people and communities be stopped. The decriminalisation of consensual, adult same sex activity will act as the first step towards a larger campaign against section 377 that would lead to its ultimate repeal and also to the simultaneous drafting of a substantive new law on child sexual abuse. It is only then that a country so proud of its democracy and freedom will be safe for so many that live in fear on its soil.

However, in a historic verdict, the Supreme Court of India on September 6, 2018, decriminalized the Section 377 of the IPC and allowed gay sex among consenting adults in private . The Supreme Court ruled that consensual adult gay sex isn't against the law saying sexual orientation is natural and other people have no control over it.

However, this landmark event should not be construed as the culmination of more than two decades of a legal fight against the draconian law but rather should be understood as a beginning of a new era in the fight for LGBT Rights. It would not be wrong to say that the repealing of the colonial law was merely a tip of the iceberg and the LGBT community in India has a much larger and bigger struggle ahead of them.

Literature Review

Kevin Alderson (2000), Beyond Coming Out : Experiences of Positive Gay Identity, Insomniac Press. Gay studies book is a revealing study on gay esteem. Psychologist Kevin Alderson explores why some gay men manage to construct overwhelmingly positive self-images. While so many others never overcome low self esteem or outright self-hatred in interview with 16 gay men, aged 16 to 61. Dr. Alderson reveals that there are definite patterns in the development of a positive gay identity. He presents these men’s stories from childhood to adulthood, in their own words. These in depth cases studies pave the way for Dr. Alderson's trenchant and insightful analysis of the major themes emerging at each stage of development.

In view of the above, the research focuses on the study of gays & lesbians in Indian context. It tries to find out their social and cultural profile with special emphasis on

their economic status and their interactions with other segments of society. The research endeavours to peep into their personality traits to find out any angularities or variations from other segments of society. It studies their life style and leisure pattern to have a better understanding of the homosexuals as well as to bring out any deviations. The research encompasses the human rights perspective as well as the legal status of homosexuals. At present, the whole situation is in a flux moving towards dwindling opposition, more acceptance and assertive nature of gay initiatives.

Ruth Vanita and Saleem Kidwai (2001), Same-Sex Love in India, Palgrave Macmillan (eds). Same sex love in India offers an eloquent range of writings spanning more than two thousand years of Indian literature. Drawn from Hindu, Muslim, Buddhist and contemporary fictional sources, these writing convincingly demonstrate that same sex love has flourished, evolved and been embraced in various forms since ancient times.

Ruth Vanita (2002), Queering India : Same Sex Love in Indian Culture and Society, London : Routledge, covers a wide range of topics covering films, literature, popular culture, historical and religious texts, law and other related aspects of life in India. It provides a profoundly new understanding of gays and lesbians in Indian society.

Michelangelo Signori (2003), Queer in America, University of Wisconsin Press, talks on the hypocrisy in the media which continues its double standards of reporting on every detail of every one night stand of heterosexual celebrities like Britney while whitewashing the romantic lives of powerful gay men and lesbians and closeted gays work for and promote business leaders and politicians who promote an anti-gay agenda.

Bilerico Eric Marcus (2004), Making Gay History, Perennial, is an engrossing book which covers the first 50 years of the American LGBT movement through the stories of more than 60 people. It is an amazing testament of the gay men and lesbians who had the courage to live their lives openly and honestly.

Gupta, Alok. (2006), This paper seeks to determine the extent and manner in which the proscription of "carnal intercourse against the order of nature" under Section 377

of the Indian Penal Code, 1860 makes criminals out of homosexuals. Section 377 is not merely a law about anal sex alone, but applies to homosexuality in general.[16]

Sharma, A. (2008), Section 377 of the Indian Penal Code, which criminalises homosexual relations, has no jurisprudential justification as it makes illegal a consensual, voluntary sexual act that does not harm a third party and falls within individual autonomy.

The State cannot use its power to punish a particular practice on grounds of immorality only because a majority believe it to be so. This law also defines a criminal class not by virtue of its behaviour but by sexual orientation.[17]

Das, Anjaneya, (2009) ,In the previous century, legislatures and judiciaries across the globe have upheld laws criminalising homosexuality and transgender behaviour, justifying them on grounds of public decency and morality.

With the advent of the contemporary epoch, the movement against the repressive and oppressive nature of Section 377 grew exponentially and reached its culmination in Naz Foundation v. Government of NCT of Delhi, wherein the Delhi High Court recognized the anachronism associated with Section 377 and interpreted it to exclude sexual acts between consenting adults, thus decriminalising homosexuality.

Although the ramifications are limited and may be quelled by an act of Parliament, the judgment is a landmark in civil liberties' litigation and may be regarded as one of the stepping stones to the emancipation of the sexual minorities in India from tyranny and coercion at the hands of the law.

This paper is an attempt to extricate the significance and far-reaching effects of this judgment in the face of systemic abuse of homosexuals and transgenders, by enforcers of the law under the facade of upholding Section 377, prior to this judgment.

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[16] Gupta, Alok. (2006). Section 377 and the Dignity of Indian Homosexuals. Economic and Political Weekly. 41. 4815-4823. 10.2307/4418926.

[17] Sharma, A. (2008). Section 377: No Jurisprudential Basis. Economic and Political Weekly, 43(46), 12-14.

This paper shall examine the constitutional aspects of the judgment i.e. the constitutional validity of the impugned statute against Article 14, 15(1) and 21.

The author has attempted to include case law from other common law systems of the world to substantiate the sound nature of the judgment. The debates between Lord Devlin and H.L.A. Hart have also been used for the same.[18]

Sanders, D. (2009), The late 19th century saw the spread of anti-homosexual criminal laws to British colonies. The iconic example was the Indian Penal Code of 1860, with its prohibition of 'carnal intercourse against the order of nature,' a rewriting of the anti-Catholic 'buggery' law of 1534.

The language of 377 travelled around the British colonial world. France and certain other parts of Europe had decriminalized homosexual acts a century earlier, so the colonial powers of Europe spoke with different voices. Modern decriminalization is largely the product of the human rights era-sixty years since the Charter of the United Nations and the Universal Declaration of Human Rights.[19]

Hallikeri, Vinay & N., Hemanth &Mahadeshwara Prasad, D. R. & Kumar, Vijay. (2010), In India the legal system is largely a gift from British rulers. The law governing the unnatural sexual offences in India comes under the ambit of section 377 Indian Penal Code (IPC). Little is known about perception and perspective of Indian law students regarding sexual practices, offences, and homosexuality and laws governing them, Questionnaire study was undertaken at B V Bellad Law College in Belgaum, Karnataka, India.

The study participants were 234 law students above the age of 18 years. At the time of study, 97.50% of participants were aware of the sec 377 IPC .Of those who were aware, 43.8 % got their awareness from the media (i.e. news paper, internet, television etc.), and 55.30% from the classroom interactions. Most (56.70%) felt that it deals with any

[18] Sharma, A. (2008). Section 377: No Jurisprudential Basis. Economic and Political Weekly, 43(46), 12-14.

[19] Das, Anjaneya, Gay and Transgender Rights in India : Naz Foundation V. Government of NCT of Delhi (August 19th, 2009).

form of unnatural sexual act, 25.20 % of participants thought that section 377 IPC deals exclusively with homosexuality, When asked regarding legalization of same sex marriages in India 24.80% of participants agreed that it was necessary and 75.20 % were against it. Bulk (56.60 %) of participants felt that legalizing same sex marriage would set a negative impact on the society. Regarding the issue of population growth 41.78% of the participants felt that same sex marriages would help the country in reducing the existing rate, where as large proportion (54.78%) felt it would have no impact whatsoever .On the issue of recent liberal stand on same sex marriages by various countries, 71.40% of participants felt that it depended on the socio-cultural factors of those nations. According to 77.00% of participants sexual attraction amongst people of same sex is a manifestation of some psycho-pathology. Only 21.10 % participants consider exclusive peno-vaginal intercourse as natural, 36.50% of participants felt that any form of sexual activity between a man and a woman as "natural". As per 52.90 % of participants the penalties for violating section 377 were too harsh and reduction in punishment was necessary, 47.10 % felt that penalties were proportionate to the "offence" and wanted the penalties to be continued. Bulk (39.00%) of participants felt that there is need for suitable amendments to section 377 IPC. The awareness level among Indian medical students regarding unnatural offences and law is high. However, the stand and attitude of Indian medical students on homosexuality is biased due to lack of scientific knowledge and inquiry. Section 377 IPC needs to be suitably considered and amended.[20]

Haldar, P., & Kant, S. (2011), Second July 2009 ushered a new hope when the High Court of Delhi read down the law against homosexuality in the state of Delhi in India.(1) The court in its decision concluded that consensual sexual acts of adults in private should not be criminalized. This 150 odd years old law was a legacy of the British colonial rule in India. The law commonly referred to as "Section 377" prescribed imprisonment up to 10 years for "carnal intercourse against the order of nature". Traditionally, the homosexuals were subjected to stigma, violence, and

[20] Hallikeri, Vinay & N., Hemanth & Mahadeshwara Prasad, D. R. & Kumar, Vijay, Section 377 Indian Penal Code – A Study on Indian Law Students Panorama, JIAFM, (2010)

homophobia. Section 377 was often used to force unwarranted arrests and undue harassment of outreach workers and peer educators who used to work with high-risk behavior group population including men having sex with men (MSM).(2) This hampered the effective delivery of outreach services. Section 377, can no longer be used to harass, arrest or prosecute homosexuals. However, sexual acts with children or unwilling adult would still attract the provisions of the section. In essence, homosexuality has been decriminalized but not legalized.[21]

The National AIDS control program of India had estimated that there were 2.35 million men who have sex with men. The latest available figures showed that among all the HRG groups the HIV prevalence was highest in MSM (7.4%) followed by injecting drug users (IDUs) (7.2%), and female sex workers (FSWs) (5.2%). Whereas, the HIV prevalence among IDUs and FSWs had shown either stable or declining trend, there had been an increasing trend among MSM.

Danish Sheikh,(2013) , In the heart of Bangalore, in the middle of Cubbon park, is the bandstand.Huddled under this deceptively unwieldy structure, 50 odd queer folk narrate sto-ries of love, loss and everything in between as we celebrate another year without377. There are many ways of being proud, many ways of celebrating pride. Thosecolourful marches are the ones we've let the world become the most familiar with,but what I see happening today feels equally important. I feel every different, dis-parate narration today knitting us into this one tapestry of consciousness.[22]

Dipika Jain, (2013), On July 2, 2009, the Delhi High Court read down Chapter XVI, Section 377 of the Indian Penal Code. Prior to the Court's ruling, Section 377 criminalized sexual activity "against the order of nature," and served primarily as a vehicle for criminal sanction of male homosexual activity. The 150 year old law, which could impose as harsh a penalty as life imprisonment for violations, had been

[21] Haldar, P., & Kant, S. (2011). Reading down of Section 377 of Indian Penal code is a Welcome Move for HIV Prevention and Control among Men Having Sex with Men in India. Indian journal of community medicine: official publication of Indian Association of Preventive & Social Medicine, 36(1), 57–58.
[22] Danish Sheikh, "The Road to Decriminalization: Litigating India's Anti-Sodomy Law", Yale Human Rights and Development Law Journal, Volume 16 Issue 1, 2013.

challenged by public interest litigation for a decade. In its historic judgment, the Delhi High Court found that the provision violated Article 14 and 21 of the Indian Constitution, which provides for the equality of all Indian citizens and the right to live with dignity.

The reading down of Section 377 by the Delhi High Court is a pivotal moment in Indian history. Submissions made in the judgment as well as other studies have shown that anti- homosexuality laws largely impact the LGBT community in two ways: (i) anti-sodomy laws affect the relationship of sexual minorities with law enforcement agencies, leading to differential treatment; and (ii) these laws directly (and adversely) affect individual notions of self-esteem, self-worth and play a major role in social and familial acceptance and respect. Thus, the Centre for Health Law, Ethics and Technology (CHLET) at Jindal Global Law School undertook an empirical study to assess the impact of the judgment on the queer community in Delhi and to especially evaluate (i) whether, after decriminalization, members of sexual minorities have felt any difference in the treatment they receive from law enforcement officials, and (ii) whether they believe that they have achieved a greater level of respect and acceptance, from society as well as from their own families.

The research conducted for this study consists mostly of personal interviews with members of the LGBT community. This impact assessment is the first of its kind in India and, apart from providing valuable first-hand accounts of LGBT life pre- and post-decriminalization of homosexuality. Researchers interacted with individuals belonging to different sexual minorities who described their lives before and after July 2, 2009. The findings of the interviews are consistent with similar studies in other countries, such as South Africa, the United States, Canada, and Australia. These studies show that decriminalization consistently leads to a rise in the level of social acceptance and, more importantly, self-acceptance of sexual minorities.[23]

[23] Dipika Jain, Impact of the Decriminalization of Homosexuality in Delhi: An Empirical Study. The Arkansas Journal of Social Change and Public Service, 2013.

The findings of this report clearly show that the Delhi High Court judgment has positively impacted the LGBT community and has improved the quality of life of sexual minorities. However, greater efforts must be made, and strategies must be formulated in order to truly integrate the LGBT community into Indian society, eliminate stigma and discrimination, and award them the same opportunities as those available to other citizens.

Lee JGL et.al 2016 , Research on the health of lesbian, gay, bisexual, and transgender (LGBT) populations can provide important information to address existing health inequalities. Finding existing research in LGBT health can prove challenging due to the plethora of terminology used. We sought to describe existing search strategies and to identify more comprehensive LGBT search terminology. We iteratively created a search string to identify systematic reviews and meta-analyses about LGBT health and implemented it in Embase, PubMed/MEDLINE, and PsycINFO databases on May 28–29, 2015. We hand-searched the journal LGBT Health. Inclusion criteria were: systematic reviews and meta-analyses that addressed LGBT health, used systematic searching, and used independent coders for inclusion. The published search terminology in each record and search strings provided by authors on request were cross-referenced with our original search to identify additional terminology. Our search process identified 19 systematic reviews meeting inclusion criteria. The number of search terms used to identify LGBT-related records ranged from 1 to 31. From the included studies, we identified 46 new search terms related to LGBT health. We removed five search terms as inappropriate and added five search terms used in the field. The resulting search string included 82 terms. There is room to improve the quality of searching and reporting in LGBT health systematic reviews. Future work should attempt to enhance the positive predictive value of LGBT health searches. Our findings can assist LGBT health reviewers in capturing the diversity of LGBT terminology when searching.

Dangre, Ayushi and Tripathi, Abhishek, (2018),Homosexuality is a social stigma, constantly and continuously justified by discrimination, marginalization, harassment,

and language of hate owing to mere the sexual orientation of homosexuals. Over the last several decades, the homosexuals are striving for the intrinsic value of basic human rights from a socio-cultural, ethical, and legal perspective. Human sexuality is multifariously experienced to articulate a dynamic and eclectic understanding of most intimate and personal aspects of our sexual and emotional identity.[24]

K. Indhumathiand M. Kannappan, (2018), This paper talks about Unnatural Offences and LGBT Community in India. It mainly attempts to describe and explain the various aspects of Homosexuality including the evolution, the reasons, the societal attitude and reactions towardssuch relations. It also light its view in the LGBT community being contraction of Lesbians, Gays, Bisexuals andTransgenders orientations. It explains about the reasons for Homosexuality in grounds of Biological reasons and in the ground of Social and Psychological factors. It focuses on the Laws in India regarding Homosexuality and its rights. It involves section 377 of Indian Penal Code, 1860 which talks explains about the unnatural offence and its punishments. The first chapter in this paper, it deals about the constitutional validity of unnatural offences under Indian Constitution. The second chapter in this paper deals about the LGBT rights in India on his 15 years of long battle. The third chapter in this paper dealt with the legal status of Homosexuality in India and around the Globe. The paper clearly explains the reason for decriminalisation of Homosexuality in India, India being a socio-cultural society will not allow to practice such activity because many types of religious life living in India.Our legal system will not enforce the Homosexuals activity in India, if it is so it leads to unconstitutional. In India the people from all religious are treated in the same manner as the law consent about it. But the activity which affects the custom will not be enforced and practiced in India.[25]

[24] Dangre, Ayushi and Tripathi, Abhishek, Beyond Section 377 : The Peril of Being Homosexual in India (February 26, 2018).

[25] K. Indhumathi and M. Kannappan, "A Study on Unnatural Offences and LGBT Community: the Present Scenario",International Journal of Pure and Applied Mathematics, Volume 119 No. 17 2018, pp 1161-1177

Dr.GeetikaSood, Harmanpreet Kaur Sahota,(2018), This paper explores the analysis of Section 377. It explores how Section 377 has been read down and how it became the subject matter for debate. The paper starts with the brief introduction as what does Section 377 says about, to whom it deals with and who are the LGBTs and what does it means. The paper explores the history of emerging of Section 377 into the realm of the Court scenario. The intention of this paper is to find out that whether the decision of Supreme Court on decriminalising homosexuality is fair or not? The paper informs an important cultural concern to think over debate on Section 377 and the cases related to it. The present paper looksinto the minute details of homosexuality and morality from a contemporary individual's point of view. It analyses the positive as well as negative impact on the society.[26]

Miss. Pratiksha S. Dubey , (2018) , The researcher main aim to deal with the section of 377 of IPC . As I also deal with the legal definition of Unnatural Offence.HoweverI further classified what are the natural offences and what are the unnatural offences. I also deal with the essential elements for committing a unnatural offence .As I come to know for committing a unnatural offence the only Carnal intercourse is a sufficient proof that the accused had been committed a unnatural offence. For more emphasis I also deals with the circumstance in which the wife can also be able to file a case against his husband for doing unnatural sex. While researching it was also come to know that there was also a possibility of misuseof section 377 against the husband for falsely making him accused. Hence it is come to consideration that if wife file a case against his husband for unnatural sex then he must be send behind the bar because IPC in clear word defines that unnatural offence must be amount to a criminal activities. Later on it court will deal whether it was unnatural offence or not . Furthermore I also deal what are the punishment is given by court for these offence. As I also deals with landmark cases.[27]

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[26] Dr. Geetika Sood, Harmanpreet Kaur Sahota, "Supreme Court‟s Verdicton Section 377 of IPC : An Analysis", International Journal of Science and Research ,2018.

[27] Miss. Pratiksha S. Dubey, "Unnatural Offence under Section 377 IPC", International Journal of Creative Research Thoughts (IJCRT) , Volume 6, Issue 2 April 2018.

Ankit Srivastava1&Dr. Vivek Kumar, (2019) , The Indian democracy always respected, protected and fought for the human rights of its citizens. The inclusion of the words 'Liberty and Equality' are not just the ideals enshrined in the Preamble to our Constitution but a living reality for its citizens.Section 377 of Indian Penal Code, 1860 was the greatest tool for the homophobic groups to persecute the sexual minorities of India. Homosexuality is not new to the Indian society but homophobia is. The Ancient Indian literature has a verydifferent and accepting outlook towards the sexuality of humans. As a matter of fact, India was ruled by various foreign rulers who brought different ideologies to this land. The Muslims and British considered any physical relationship outside the heterosexual humans as asin against nature' which indirectly stated that it's a grossest form of violation of God's commandment. The journey of inclusion of Section 377 in Indian Penal Code,1860 and its revolt which finally scrapped this archaic law on September 6, 2018 by the Supreme Court of India is a showcase of the LGBT community and the people who constantly supported and fought on their behalf. The activists are responsible in sensitising the masses towards the LGBT community and pressurising the Governments to end the discrimination. For the very purpose, various NGOs fought together with the queer community in India. Various 'pride parades' were carried out from metropolitan cities to other relatively small cities which included activists, lawyers, etc. This article is written to get ourselves equipped more with the struggle faced by the LGBT community in India and a step closer to accepting something which is natural.[28]

Dominic McGoldrick, (2019) , The judgment marked the end of almost a quarter of a century of complex legal challenges and campaigning by lesbian, gay, bisexual and transgender (LGBT) organisations.[29]

Pukhrajbir Kaur, (2019), No kind of prejudice and discrimination can continue in perpetuity. Section 377 was introduced in Indian criminal law in furtherance of western

[28] Ankit Srivastava 1 & Dr. Vivek Kumar, "Section 377 and LGBT Activism in India", International Journal of Research and Analytical Reviews, Volume 6 Issue 21 April-June, 2019.
[29]Dominic McGoldrick, Challenging the Constitutionality of Restrictions on Same-Sex Sexual Relations : Lessons from India, Human Rights Law Review, Volume 19, Issue 1, February 2019, Pages 173–185.

notions of morality, based on Abrahamic ideologies.The Apex courts decision in Navtej Singh Johar&Ors. v. UOI, leads one to believe that the Indian judiciary is indeed the last bastion of fundamental rights in the country. An amendment Section 377 is only the start of a larger drive to protect this idea of freedom of personal identity as LGBT people want equal rights, not special rights.[30]

Amala K.B,Amruthanjaly.G,Sreelakshmi.N, (2019), In the contemporary global and political scenario, social media plays a significant role in shaping the social, cultural and communal edifice of a nation. It has now become the strongest and easiest means of communication through which people can share their opinions and thoughts regardless of any barriers. Social media and popular culture has a pivotal role in constructing the concepts of gender identity, gender expression and socialization process. Homosexuality is widely portrayed and analysedin visual forms from different perspectives. Many contemporary films and advertisements deconstruct the social stereotypes and stigmas associated with homosexuality. However, the orthodox and patriarchal society that still exist today maintains an aversion towards the homosexual community and excludes them from family, social events and cultural festivals. This paper attempts to analysethe vivid portrayals of the lesbian, gay, transgender and queer folk in cinema and other visual forms. Also, it throws light at how media and films help in creating different cultural and gender identities. However, in the real world, the homophobic attitude of the society restricts the homosexuals from exposing themselves to the society. In this, background the visual forms plays a vital role in promoting the LGBT rights and relations.[31]

M.V. Lee Badgett et.al 2019 , This study analyzes the relationship between social inclusion of lesbian, gay, bisexual, and transgender (LGBT) people and economic

[30] Pukhrajbir Kaur, "Unravelled Section 377 IPC: A Review of Post Navtej Singh Johar & Ors. v. UOI Judgment Scenario", International Journal of Emerging Technologies and Innovative Research (www.jetir.org), ISSN:2349-5162, Vol.6, Issue 6, page no.363-372, June-2019.

[31] Amala K. B., Amruthanjaly.G,Sreelakshmi.N, "Accepting the LegalLGBT Visuals ofCulture",International Journal of Innovative Technology and Exploring Engineering,Volume-8 Issue-7C,2019.

development. It uses legal and economic data for 132 countries from 1966 to 2011. Previous studies and reports provide substantial evidence that LGBT people are limited in their human rights in ways that also create economic harms, such as lost labor time, lost productivity, underinvestment in human capital, and the inefficient allocation of human resources. This analysis uses a fixed effects regression approach and a newly-created dataset–Global Index on Legal Recognition of Homosexual Orientation (GILRHO)–to assess how these detriments are related to the macro economy. Our study finds that an additional point on the 8-point GILRHO scale of legal rights for LGB persons is associated with an increase in real GDP per capita of approximately $2000. A series of robustness checks confirm that this index continues to have a positive and statistically significant association with real GDP per capita after controlling for gender equality. In combination with the qualitative evidence from previous studies and reports, our quantitative results suggest that LGBT inclusion and economic development are mutually reinforcing. Also, a back-of-the-envelope estimate suggests that about 6% to 22% of the finding could reflect the costs to GDP of health and labor market stigmatization of LGB people. Results from this study can help to better understand how the fuller enjoyment of human rights by LGBT people can contribute to a country's economic development.

Ecker J et.al 2019, Little is known about lesbian, gay, bisexual, transgender, and queer (LGBTQ) adults who experience homelessness. The current review critically analyzes the scant literature on LGBTQ adults who experience homelessness, with a particular focus on: (1) pathways into homelessness; (2) support needs; (3) targeted programming; and (4) exits out of homelessness. A total of 143 articles were identified, and 16 articles met the criteria of appropriate age range, article quality, and relevance of topic. Results from this review demonstrate that homeless LGBTQ adults have unique physical and mental health challenges, largely concerning HIV and substance use. Transgender and gender non-conforming adults who experience homelessness encounter several challenges in the homelessness system, particularly in regard to safety and gender-affirming supports. Recommendations focus on practical implications for support and suggestions for future research.

Rosińska et.al 2019, Lesbian, gay, bisexual, trans and intersex (LGBTI) people experience significant health inequalities. Located within a European Commission funded pilot project, this paper presents a review of the health inequalities faced by LGBTI people and the barriers health professionals encounter when providing care. A narrative synthesis of 57 papers including systematic reviews, narrative reviews, meta-analyses and primary research. Literature was searched in Cochrane, Campbell Collaboration, Web of Science, CINAHL, PsychINFO and Medline. The review was undertaken to promote understanding of the causes and range of inequalities, as well as how to reduce inequalities. Health inequalities can be addressed via changes in policy, research and in practice through health services that accommodate the needs of LGBTI people. With improved training to address gaps in their knowledge of LGBTI health and healthcare, health professionals should work in collaboration with LGBTI people to address a range of barriers that prevent access to care. Through structural change combined with increased knowledge and understanding, services can potentially become more inclusive and equally accessible to all.

Serrano Amaya JF, Ríos González O.,2019LGBT issues are becoming a key topic in several political agendas and social struggles worldwide (European Commission, 2015; UN, 2013). Public bodies across the world and transitional movements are designing new policies and strategies that address the protection of LGBT rights. For instance, in 2013 the Office of the United Nations High Commissioner for Human Rights designed the campaign 'Free and Equal', whose main objective was equal treatment of LGBT people. In 2015, the European Commission launched a strategy called the 'List of Actions by the Commission to Advance LGBTI Equality', in which a set of proposals to protect LGBT rights were defined.One of the examples of these transnationals changes is the trend toward the legalization of same-sex marriage, mostly supported by LGBT movements. This trend has been highly debated in recent literature because it has become a priority within the campaigns of LGBT organizations around the world. This critique follows the ongoing debate about the influence of Western dynamics in the analysis of same-sex marriage recognition.

Wandrekar JR, NigudkarAS. , (2020), The period from 2009 to 2019 has seen a lot of conversation about issues of LGBTQIA+ (lesbian, gay, bisexual, transgender, queer/ questioning, intersex, asexual, and others) individuals in India, but they continue to be a group showing poor health equity.

Objective: This descriptive content review attempted to explore 5 questions: what is the nature of existing research on mental health of LGBTQIA+ individuals, what are the pathways that contribute to mental health issues, whether the existing health facilities mitigate or facilitate these pathways, what are the interventions proposed for this group, and what are the gaps in research that can be addressed in the next decade.

Method: "Mental health aspects" were described as variables relevant to understanding individuals' cognitions, emotions, and behavior. We searched for literature in online journal databases, in archives of the most prominent journals, on websites of prominent LGBTQIA+ organizations, and through cross-referencing of papers obtained. The data were abstracted and coded into themes and sub themes. We found 22 reviews and reports, 4 viewpoints and comments, 7 editorials, 1 conference proceeding, and 60 original articles.

Conclusions: Prevalence studies reveal that LGBTQIA+ individuals were found to show high rates of mental health concerns, and that the adapted minority stress model may be a crucial pathway for the same. Lived experiences, factors related to mental well-being, and societal attitudes have also been studied. Intervention studies are relatively fewer, and certain subgroups of LGBTQIA+ identities are less represented in research. Gaps in research were identified and recommendations for research in the coming decade were proposed.[32]

FizaKhanandDilsanaKhan , (2020), The idea of human rights rests on the centre of thinking that all humans are equal. All humans have dignity and thus should be treated equally. Anything that undermines that dignity is a violation, as it violates the

[32] Wandrekar JR, Nigudkar AS. What Do We Know About LGBTQIA+ Mental Health in India? A Review of Research From 2009 to 2019. Journal of Psychosexual Health. 2020; 2(1):26-36.

principle of equality and gives way for discrimination. Homosexuality is one of the most debated issues in the world which raises the question on human rights. People around the world become the prey of violence and discrimination only on the basis of who they love and how they look. The year 2018 ushered a ray of hope for the LGBT community who has been fighting a prolonged battle for their rights, and finally, homosexuality is decriminalized in the judgement of the Navtej Singh Johar case. While the laws have changed but violence and discrimination against the LGBT community still persist at the hands of state machinery is evidence to the low status it actually grants to the LGBT community. In India same-sex marriage is still a far-fetched dream. We must look forward to the International statue for the attainment of the real objective of the Constitution i.e. All citizens are equal. There is a need to reform the society, to amend the underline thinking that it is no taboo or some mental condition and to make everyone believe that human rights stand for all.[33]

Wilson, C., Cariola, L.A , 2020 Due to increased levels of stigma, discrimination and victimization Lesbian, Gay, Bisexual, Transgender, Queer, Questioning or Intersex (LGBTQI+) youth face particular challenges in society. With the intention of better understanding the challenges and issues that LGBTQI+ youth are experiencing, this systematic review explored qualitative studies with a focus on mental health services and the requisite social support service policies and programs for LGBTQI+ youth.

Qualitative research systematically examines the expressed thoughts and feelings of the research participants, and through reflective analysis of the themes and links discussed, can provide rich and nuanced understanding. A synthesis of the included studies identified five core themes: (1) Isolation, rejection, phobia, need for support; (2) Marginalization; (3) Depression, self-harm and suicidality; (4) Policy and environment; and (5) Connectedness. Key results suggest that community, school, and family resources to support resilience will optimize LGBTQI+ mental health. This systematic review of qualitative research provides a source of rich information to

[33] Fiza Khan and Dilsand Khan, “LGBT Rights in India : The Status Quo", International Journal of Law Management & Humanities, Vol. 3 Iss 4; 731, 2020.

inform the provision of services and policies that will address the disparity into mental health statistics for the LGBTQI+ population.

Objectives of the Study

- To understand the concept of S. 377 of Indian Penal Code.
- To perform critical analysis of S. 377 of Indian Penal Code and violations of Fundamental Rights of Constitution of India.
- To study the Role of Judiciary with regard section 377 Indian Penal Code.
- To study the importance of granting marriage rights to LGBTQ community.
- To study the role of government for safeguarding the rights of LGBTQ community.
- To study the unaddressed issues after decimalizing homosexuality and suggest a solution for the same.

Research Problems

- Whether homosexuals have been embarrassed by Indian Society.
- Whether decimalization of S. 377 met the needs of homosexuals and has their life changed.
- Are LGBTQ protected against discrimination anywhere in the country?

Significance of Research

Despite homosexuality been decriminalised the Laws in India still remain hostile and Prejudicial toward the LGBT community in several ways. There has been hike in suicide cases of homosexuals and this draws our attention that decimalization of section 377 has not brought the fulfilling effect that it was expected to bring. The reason behind this is that there exists an enormous gap between the legislative and judicial

development of LGBT laws in India. So, though the Supreme Court of India through Landmark Judgements has laid the groundwork to confer upon the ques and non-binary community a bundle of basic human rights, but the Legislature has failed to keep up with recent development.

As per doctrine of Separation of Powers, the judiciary cannot engage in specific law making, as its role is limited to interpreting the existing laws. S. 377 was amended to what extent is the new law applied and helpful to members of the LGBT community.

So essentially speaking, the same sex couples now has the legal rights to cohabit and conduct their personal affairs without any fear of persecution but are still denied equality of treatment in various aspects.

Thus, it is imperative to take the conversation forward and talk about various laws that continue to discriminate the LGBT+ persons. it includes anti-discriminatory laws such as no-recognition of same sex marriages, no rights for adoption, surrogacy etc. So, the fight for equality continues as there is a long battle waiting ahead, swarmed with numerous difficulties given that the LGBTQ community remains closed off to civil rights.

Chapterization

The research work is divided into 9 chapters.

Chapter-1 Introduction: deals with Introduction which explains the concept of Section 377 of Indian Penal Code, it also enlists the objectives and significance of the Research work, the research methodology and the chapter plan.

Chapter-2 Review of Literature: deals with literature review which is the work by other authors in similar domain of study.

Chapter-3 Research Methodology: deals with research design and research methodology.

Chapter-4 Section 377 And Relevance with Ancient Literature: deals with section 377 of IPC and relevance with ancient literature.

Chapter-5 Judicial Approach Towards Section 377: deals with judicial interpretation of Section 377 of Indian Penal Code.

Chapter-6 Fundamental Rights Vis-A Vis Section 377: deals with Validity of Section 377 and violations of Fundamental Rights of Constitution of India.

Chapter-7 Same Sex Marriage / Rights of LGBTQ + Community- A Long Way to Go: deals with Same Sex Marriage and Rights of LGBTQ.

Chapter-8 Section 377 And Need for Anti-Discriminatory Laws: deals with need for Ant discriminatory Laws.

Chapter-9 Summary and Conclusions: deals with Conclusion and Suggestions.

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